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Examiner: P. Niland

For: WET SURFACE ADHESIVES

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REPLY BRIEF ON APPEAL

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This is a reply brief to the Examiner's Answer mailed on March 17, 2003. This Reply Brief is being filed in triplicate.

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**SUPPLEMENTAL ARGUMENTS OF APPELLANTS**

**REJECTION UNDER 35 U.S.C. § 102(b)**

**Rejection of Claims 1-10 In View of Blake**

**Independent Claim 1**

Appellants' independent claim 1 is directed to a **wet stick** pressure sensitive adhesive comprising, *inter alia*, the polymerization product of: (a) about 30 to about 70 parts by weight of an (meth)acrylate ester monomer wherein the (meth)acrylate ester monomer, when homopolymerized, has a Tg of less than about 10°C; (b) about 70 to about 30 parts by weight of a hydrophilic acidic comonomer; and (c) about 10 to 100 parts based on 100 parts (a) + (b) of a non-reactive plasticizing agent, **wherein the pressure sensitive adhesive adheres to wet substrate surfaces.**

On page 1, lines 7-8 of Appellants' specification, Appellants define "wet stick" pressure sensitive adhesives as "pressure sensitive adhesives that adhere to wet or moist surfaces." Further, on page 5, lines 26-29 of Appellants' specification, Appellants define a "wet-stick adhesive" as being "a material that exhibits pressure sensitive adhesive properties when adhered to a substrate that has been flooded with water. Wet-stick adhesives may or may not demonstrate pressure sensitive adhesive properties under dry conditions." In addition, independent claim 1 specifically recites the claim feature "wherein the pressure sensitive adhesive adheres to wet substrate surfaces."

In order for the disclosure of Blake to anticipate Appellants' claimed invention as embodied in independent claim 1, Blake must disclose each and every claim feature recited in independent claim 1. Blake does not disclose each and every claim feature recited in independent claim 1.

Blake fails to disclose at least the following claim features recited in independent claim 1:

- (1) a wet-stick pressure sensitive adhesive;
- (2) a wet-stick pressure sensitive adhesive comprising a polymerization product of a non-reactive plasticizing agent<sup>1</sup>; and
- (3) a wet-stick pressure sensitive adhesive, wherein the pressure sensitive adhesive adheres to wet substrate surfaces."

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<sup>1</sup> It should be noted that Blake discloses a method of preparing water-dispersible adhesive compositions, wherein the plasticizing components are not part of the polymerizable mixture, but are instead added after the adhesive copolymer is prepared. See Blake, column 6, lines 53-63.

Examiner Niland argues "appellant has not shown that the psa of Blake is different than that of the instant claims" (See, Examiner Answer, page 3, paragraph 10 I, lines 5-6). Appellants respectfully submit that Appellants have pointed out at least one difference between Appellants' claimed invention and the adhesives disclosed in Blake, namely, that Appellants' claimed invention embodied by independent claim 1 is directed to "wet-stick" pressure sensitive adhesives. In addition, Appellants respectfully submit that the only requirement to overcome an anticipatory rejection is for Appellants to show that each and every claim feature recited in independent claim 1 is not disclosed in Blake. Appellants have met this requirement.

For at least the reasons given above, Blake cannot anticipate Appellants' independent claim 1. Since claims 2-7 depend from independent claim 1 and recite additional claim features, Blake cannot anticipate Appellants' claims 2-7.

Independent Claim 8

Appellants' independent claim 8 is directed to a method for preparing a wet stick pressure sensitive adhesive comprising, *inter alia*, the steps of (a) combining a solventless polymerizable mixture comprising: (i) about 30 to about 70 parts by weight of an (meth)acrylate ester wherein the (meth)acrylate ester, when homopolymerized, has a Tg of less than about 10°C; (ii) about 70 to about 30 parts by weight of a hydrophilic acidic comonomer; and (iii) about 10 to 100 parts based on 100 parts of the sum of components (a) + (b) of a non-volatile, non-reactive plasticizing agent; and (b) polymerizing the solventless polymerizable mixture to form the pressure sensitive adhesive that adheres to wet substrate surfaces.

Blake fails to disclose at least the following claim features recited in independent claim 8:

- (1) a method for preparing a wet stick pressure sensitive adhesive;
- (2) a method for preparing a wet stick pressure sensitive adhesive using a solventless polymerizable mixture<sup>2</sup>;

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<sup>2</sup> It should be noted that Blake discloses the use of a solvent, ethyl acetate, in the preparation of the disclosed adhesives. Further, methanol is added to the resulting polymer to reduce the solids content of the adhesive. See Blake, column 6, lines 45-52.

(3) a method for preparing a wet stick pressure sensitive adhesive using a solventless polymerizable mixture, wherein the polymerizable mixture contains a non-volatile, non-reactive plasticizing agent<sup>3</sup>; and

(4) a method of forming a pressure sensitive adhesive that adheres to wet substrate surfaces.

For at least the reasons given above, Blake cannot anticipate Appellants' independent claim 8.

Independent Claim 9

Appellants' independent claim 9 is directed to a method for preparing a **wet stick** pressure sensitive adhesive comprising, *inter alia*, the steps of (a) combining a **solventless** polymerizable mixture comprising: (i) about 30 to about 70 parts by weight of an (meth)acrylate ester wherein the (meth)acrylate ester, when homopolymerized, has a Tg of less than about 10°C; (ii) about 70 to about 30 parts by weight of a hydrophilic acidic comonomer; and (iii) about 10 to 100 parts based on 100 parts of the sum of components (a) + (b) of a non volatile, non-reactive plasticizing agent; (b) **enveloping the polymerizable mixture in a packaging material**; (c) exposing the enveloped polymerizable mixture to sufficient radiation to polymerize the polymerizable mixture and to form the **pressure sensitive adhesive that adheres to wet substrate surfaces**.

Blake fails to disclose at least the following claim features recited in independent claim 9:

- (1) a method for preparing a wet stick pressure sensitive adhesive;
- (2) a method for preparing a wet stick pressure sensitive adhesive using a solventless polymerizable mixture;
- (3) a method for preparing a wet stick pressure sensitive adhesive comprising a step of enveloping the polymerizable mixture in a packaging material; and
- (4) a method of forming a pressure sensitive adhesive that adheres to wet substrate surfaces.

For at least the reasons given above, Blake cannot anticipate Appellants' independent claim 9.

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<sup>3</sup> See footnote 1.

Independent Claim 10

Appellants' independent claim 10 is directed to a method for preparing a wet stick pressure sensitive adhesive comprising, *inter alia*, the steps of (a) preparing a prepolymeric syrup comprising: (i) about 30 to about 70 parts by weight of an (meth)acrylate ester wherein the (meth)acrylate ester, when homopolymerized, has a Tg of less than about 10°C; and (ii) about 70 to about 30 parts by weight of a hydrophilic acidic comonomer; (b) combining the prepolymeric syrup with about 10 to 100 parts based on 100 parts of the sum of components (i) + (ii) of a non-reactive plasticizing agent to form a mixture/blend; (c) exposing the enveloped polymerizable mixture to sufficient radiation to polymerize the polymerizable mixture and to form the pressure sensitive adhesive that adheres to wet substrate surfaces.

Blake fails to disclose at least the following claim features recited in independent claim 10:

- (1) a method for preparing a wet stick pressure sensitive adhesive;
- (2) a method for preparing a wet stick pressure sensitive adhesive comprising a step of preparing a prepolymeric syrup;
- (3) a method for preparing a wet stick pressure sensitive adhesive comprising a step of combining a prepolymeric syrup with a non-reactive plasticizing agent to form a mixture/blend prior to polymerization and the mixture/blend; and
- (4) a method of forming a pressure sensitive adhesive that adheres to wet substrate surfaces.

For at least the reasons given above, Blake cannot anticipate Appellants' independent claim 10.

Summary of 102(b) Rejection

For at least the reasons given above, it is respectfully submitted that the rejection of claims 1-10 under 35 U.S.C. §102(b) over Blake should be reversed.

REJECTION UNDER 35 U.S.C. § 103(a)

Rejection of Claims 1-10 In View of Blake

The teaching of Blake fails to make obvious Appellants' claimed invention embodied in claims 1-10 for at least the reasons given above. In addition, Appellants respectfully submit that the teaching of Blake fails to suggest to one of ordinary skill in the

art a wet-stick pressure sensitive adhesive or a method of making the same as recited in independent claims 1, 8, 9 and 10 above.

As discussed in Appellants' Brief on Appeal filed on January 10, 2003 (paper no. 15), Examiner Niland argues

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the instantly claimed combinations of ingredients and amounts thereof in the psa of the patentee because they are encompassed by the patentee and would have been expected to give a psa having the properties of the psa of the patentee.

(*See*, August 13, 2002 Final Office Action, paper no. 10, page 3, lines 11-14. *See also*, March 17, 2003 Examiner's Answer, paper no. 16, page 4, lines 12-15.)

Appellants disagree.

As discussed above, the teaching of Blake does not suggest to one of ordinary skill in the art a combination of polymerization product components used in the present invention and recited in the present claims to produce an adhesive, and especially a wet stick pressure sensitive adhesive. In particular, the teaching of Blake does not teach or suggest a polymerization product component in the form of a non-reactive plasticizing agent.

Further, as discussed above, the teaching of Blake does not suggest to one of ordinary skill in the art a method of forming an adhesive, and especially a wet stick pressure sensitive adhesive, comprising the method steps recited in independent claims 8, 9 and 10. In particular, the teaching of Blake does not suggest a method of polymerizing a combination of polymerization product components, wherein at least one polymerization product component comprises a non-reactive plasticizing agent.

Appellants have pointed out in their Brief on Appeal (paper no. 15) that the teaching of Blake actually teaches away from a wet stick pressure sensitive adhesive as recited in independent claim 1 given that the teaching of Blake is solely directed to water-dispersible adhesives, i.e., adhesives, which break apart when exposed to water. In response, Examiner Niland states

The examiner would point out that water dispersible resins are commonly applied to substrates in the form of the aqueous dispersion, eg latex paints/adhesives. The substrate is necessarily wet in such applications and the resin still binds to the substrate. Thus, the reference water dispersible psa would have been expected to stick to wet substrates.

(*See*, March 17, 2003 Examiner's Answer, paper no. 16, page 4, lines 17-20.)

Appellants disagree.

Appellants respectfully submit that Examiner Niland's statement regarding latex paints and water-dispersible adhesives has little, if anything, to do with whether the teaching of Blake suggests a wet stick pressure sensitive adhesive or methods of making the same as recited in Appellants' independent claims 1, 8, 9 and 10. Appellants' claimed invention is not directed to latex paints, latex adhesives, water dispersible adhesives, or "wet" adhesives, but are instead directed to wet stick pressure sensitive adhesives, which are not wet themselves, but adhere to wet substrate surfaces as defined in Appellants' specification.

Appellants maintain the position that the teaching of Blake does not suggest to one of ordinary skill in the art Appellants' claimed invention, namely, wet stick pressure sensitive adhesives that adhere to wet substrate surfaces, and methods of making such wet stick pressure sensitive adhesives.

Summary of 103(a) Rejection

For at least the reasons given above, it is respectfully submitted that the rejection of claims 1-10 under 35 U.S.C. §103(a) over the teaching of Blake should be reversed.



**CONCLUSION**

For at least the reasons given above, Appellants respectfully submit that Blake fails to anticipate or make obvious the claimed invention embodied in Appellants' claims 1-10. Accordingly, the above rejections should be reversed.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "James D. Withers". The signature is fluid and cursive, written over a horizontal line.

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